SINGAPORE REPORTS

MARTROPICO COMPANIA NAVIERA S.A. v. "PERMINA 108" (OWNERS) & PERSONS INTERESTED; THE "PERMINA 108"

MARTROPICO COMPANIA NAVIERA S.A. v. "PERMINA SAMUDRA XIV" (OWNERS) & PERSONS INTERESTED; THE "PERMINA SAMUDRA XIV"

[O.C.J. (Choor Singh J.) August 25, 1976]
[Singapore — Admiralty in Rem Nos. 277 & 279 of 1976]

Shipping Law — Time charterparty — Claim for non-payment of time charter hire against owners of vessels — Two writs issued in respect of same claim — Warrants of arrest against two vessels — Interpretation of s. 4(4) of High Court (Admiralty Jurisdiction) Act — The Administration of Justice Act, 1956 (U.K.), s. 3(4) — The International Convention Relating to the Arrest of Seagoing Ships, art. 3.

By a time charterparty dated September 1, 1970 the plaintiffs chartered their vessel "Ibnu" to the defendants for ten years. On July 24, 1976 the plaintiffs issued two writs in two separate actions against the defendants. The plaintiffs' claim was for non-payment of the said charter hire. In both the affidavits in support of the applications for a warrant of arrest to detain the ships "Permina 108" and "Permina Samudra XIV" respectively the plaintiffs claimed that the defendants were the owners of the ships. Consequently, warrants of arrest were issued against both vessels. The defendants entered conditional appearance in both actions and filed Notices of Motion for an order that the writ of Summons and all subsequent proceedings be set aside for non-compliance with section 4(4) of the High Court (Admiralty Jurisdiction) Act.

The defendants contended that the plaintiffs were not entitled to bring proceedings *in rem* against both vessels because the claims asserted in relation to the charter of "Ibnu" have no connection with those ships, even if owned by the defendants. They further argued that the ships arrested were not beneficially owned by them.

The plaintiffs on the other hand submitted that they were entitled to arrest both vessels under clause (b) of section 4(4) as these ships were owned by the defendants who were liable *in personam* on the plaintiffs' claim for non-payment of the said charter hire.

Held: (1) it is not a requirement of clause (b) of section 4(4) of the High Court (Admiralty Jurisdiction) Act that the ship to be arrested under clause (b) should be in the same ownership as the ship of which the claim relates;

(2) in order to proceed *in rem* against a "sister" ship, all that is necessary is to show that its owners at the time when the action was brought were the charterers of the ship in respect of which the claim arose at the time when the cause of action arose;

(3) the defendants were therefore liable to have their ships arrested for sums due under the "Ibnu" charterparty even though it was a time charter;

(4) the plaintiffs have only one maritime claim in respect of the non-payment of the said charter hire and they are not entitled to proceed *in rem* against both ships for the same maritime claim. The plaintiffs having first arrested the "Permina 108", the subsequent arrest of the "Permina Samudra XIV" must be set aside and the ship be released.

[Editorial Note: See Court of Appeal decisions at pp. 47 and 49, *post.*]

Cases referred to:-

(1) *The Eschersheim, The Jade* [1976] 1 W.L.R. 430.

(2) *Davie* v. *New Merton Mills Ltd.* [1959] A.C. 604.

(3) *Medway Drydock & Engineering Co. Ltd.* v. *The "Andrea Ursula" (Owners)* [1971] 1 Lloyds Reports 145.

(4) *The St. Elefterio Schwarz & Co. (Grain) Ltd.* v. *St. Elefterio, ex Arion (Owners)* [1957] 2 All E.R. 374.

(5) *Smith's Dock Co. Ltd.* v. *Owners of the M.V. St. Merriel* [1963] 1 All E.R. 537.

(6) *Monte Ulia (Owners)* v. *Banco & Ors. (Owners); The Banco* [1971] P. 137.

ADMIRALTY IN REM.

Michael David Thomas Q.C. (*T.H.A. Potts* with him) for the plaintiffs.

Richard Stone Q.C. (*M. Karthigesu* and *S. Selvadurai* with him) for the defendants.

Choor Singh J.: These are applications by the defendants in two actions *in rem* to set aside the writs. Both applications were heard together as the two writs issued by the same plaintiffs are in respect of claims arising out of the same subject matter and were issued to arrest two ships owned by the same defendants. The facts are these. The plaintiffs as owners or chartered owners of the vessel "Ibnu" by a Time Charterparty dated September 1, 1970 chartered the vessel to P.N. Pertambagan Minyak dan Gas Bumi Negara (hereinafter referred to as the defendants) for a period of ten years.

On July 24, 1976 the plaintiffs issued in the High Court two writs *in rem*, the first being Admiralty in Rem No. 277 of 1976 against the owners of and other persons interested in the ship "Permina 108", and the second being Admiralty in Rem No. 279 of 1976 against the owners of and other persons interested in the ship "Permina Samudra XIV".

The indorsement of claim in both writs is identical and is as follows: —

"The plaintiffs' claim against the defendants is for non-payment of the charter hire due under a Charterparty dated the 1st day of September 1970 in respect of the vessel 'Ibnu'."

In the affidavit filed in Admiralty in Rem No. 277 of 1976 to support the application for a warrant of arrest to detain the ship "Permina 108" it is alleged that the said ship was at all material times owned by the defendants and that there has been no change of ownership.

In the affidavit filed in Admiralty in Rem No. 279 of 1976 to support the application for a warrant of arrest to detain the ship "Permina Samudra XIV" it is alleged that the said ship was at all material times owned by Warukin Corporation which is alleged to be wholly owned by the defendants and that there has been no change of ownership.

In both said affidavits it is alleged that on the 22nd day of July 1976 there was "due and owing from the defendants to the plaintiffs the sum of U.S.$7,230,711.48 by way of unpaid charter hire in respect of the said vessel "Ibnu".

Warrants of arrest were issued on the 24th day of July 1976 in both actions.

In Admiralty in Rem No. 277 of 1976 the warrant of arrest was executed and the ship "Permina 108" detained on the 24th day of July 1976 at 1.00 p.m.

In Admiralty in Rem No. 279 of 1976 the warrant of arrest was executed and the ship "Permina Samudra XIV" detained on the 24th day of July 1976 at 1.15 p.m.

It will be noted that the "Permina 108" was arrested before the "Permina Samudra XIV" and this fact as shall be seen later is of considerable importance in these cases.

On July 29, 1976 the defendants entered conditional appearance in both actions and also filed Notices of Motion in both actions for an order "that the Writ of Summons and all subsequent proceedings be set aside for non-compliance with section 4(4) of the High Court (Admiralty Jurisdiction) Act". In each case in the affidavit filed in support of the motion to set aside the writ it is alleged that the affidavit leading to the Warrant of Arrest does not disclose a cause of action for the plaintiffs to arrest the defendants' ship as the affidavit did not satisfy the requirements of section 4(4) of the High Court (Admiralty Jurisdiction) Act.

As stated earlier both applications to set aside the writs were heard together by me on July 30, 1976 but as the hearing could not be completed, it was adjourned to August 13, 1976. In between these dates the plaintiffs, on August 11, 1976, filed their statement of claim in both actions.

In the statement of claim filed in Admiralty in Rem No. 277 of 1976 the plaintiffs have pleaded as follows: —

"In accordance with Clause 10 and the other relevant provisions of the Charterparty hire and/or purchase payments became payable to the plaintiffs from the 16th day of December 1975 as follows: —

Date	*Amount (US$)*
16.1.76	972,588.71
16.2.76	945,115.70
16.3.76	934,443.14
16.4.76	968,547.41
Total	US$3,820,692.96
Less Credit Note No. 1	8,502.89
Balance	US$3,812,190.07

In breach of the said Charterparty the defendants have failed and/or refused to pay to the plaintiffs the whole or any part of the said amount due."

In the statement of claim filed in Admiralty in Rem No. 279 of 1976 the plaintiffs have pleaded as follows: —

"In accordance with Clause 10 and the other relevant provisions of the Charterparty hire and/or purchase payments became payable to the plaintiffs from the 16th day of December 1975 as follows: —

Date	*Amount (US$)*
16.5.76	621,564.36
16.6.76	938,590.64
16.7.76	929,529.69
16.8.76	928,836.72
Total	US$3,418,521.41

In breach of the said Charterparty the defendants have failed and/or refused to pay to the plaintiffs the whole or any part of the said amount due."

It will be seen that whereas in the affidavits leading to the warrant of arrest in both actions it is alleged that a sum of U.S.$7,230,711.48 was due as unpaid charter hire in respect of the vessel "Ibnu", the amount claimed in each of the statements of claim is considerably less. The total sum due under the charterparty has been split up into two portions and each made the subject of the claim in each action. This device has been resorted to quite obviously to justify the arrest of two ships in respect of a single claim.

Before proceeding any further it is desirable that I should set out the provisions of section 4(4) of the High Court (Admiralty Jurisdiction) Act. The said section 4(4) provides as follows: —

"4(4) In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against —

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

This subsection is quite obviously based on section 3(4) of the Administration of Justice Act, 1956 of England which provides as follows: —

"3(4) In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship, the Admiralty jurisdiction of the High Court and (where there is such jurisdiction) the Admiralty jurisdiction of the Liverpool Court of Passage ... may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against —

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

The Administration of Justice Act, 1956, was passed by the English Parliament for the purpose of enabling the United Kingdom to comply with the international obligations accepted by the states who were parties to the International Convention Relating to the Arrest of Seagoing Ships which had been signed on behalf of the United Kingdom in 1952. Section 3(4) of the English Act evidently is based on and seeks to comply with Article 3 of the Convention which provided as follows: —

"Article 3

(1) Subject to the provisions of paragraph 4 of this Article and of Article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in Article 1 (1)(o), (p) or (q).

(2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

(3) A ship shall not be arrested, nor shall bail or other

security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any one of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside and the ship released by the court or other appropriate judicial authority of that State, unless the claimant can satisfy the court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

(4) When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims.

The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship."

The defendants rely on two grounds to set aside the Writs. First, they contend that the plaintiffs are not entitled to bring proceedings *in rem* against "Permina 108" and "Permina Samudra XIV" because the claims asserted in relation to the charter of "Ibnu" have no connection with those ships, even if owned by the defendants. In other words, that the court has no jurisdiction. The point taken is therefore purely a point of construction of the relevant section *i.e.* section 4(4) of the High Court (Admiralty Jurisdiction) Act. The defendants say that there is a fatal flaw in both actions because the ships arrested are not beneficially owned by the same owner *i.e.* the owner of the ship in connection with which the claims arise. They contend that the "sister" ship which may be arrested under clause (b) of section 4(4) of the Act must be the sister of the ship mentioned in clause (a) of section 4(4) of the Act. And the defendants rely on the following passage in the speech of Lord Diplock in the House of Lords in *The Eschersheim, The Jade,*[1] at page 436: —

"... By article 3 (of the Convention) the subject of the arrest is 'the particular ship in respect of which the maritime claim arose' or one of its sister ships. The corresponding reference in section 47(1) of the Act to the subject of the arrest in Scotland is 'the ship with which the action is concerned.'

In England the matter is governed by section 3(4) of the Act which reads as follows: —

'In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court... may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against — (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.'

It is clear that to be liable to arrest a ship must not only be the property of the defendant to the action but must also be identifiable as the ship in connection with which the claim made in the action arose (or a sister ship of that ship). The nature of the 'connection' between the ship and the claim must have been intended to be the same as is expressed in the corresponding phrase in the Convention 'the particular ship in respect of which the maritime claim arose'. One must therefore look at the description of each of the maritime claims included in the list in order to identify the particular ship in respect of which a claim of that description could arise."

The plaintiffs, on the other hand, want me to disregard the above passage as *per incuriam*. It is submitted that Lord Diplock's comments on the class of ships liable to arrest were not part of the *ratio decidendi*. The defendants in that case owned both the ship (Rotesand) in respect of which the claims under (d) and (h) arose as well as the ships named in the Writs (Jade and Eschersheim). It is further submitted that the construction of section 3(4) of the 1956 Act was not dealt with at all in arguments before the House of Lords and that it was a point the respondents wished to raise but they were not called upon to reply to the appellants. And finally, that *obiter dicta* must always be approached by any court with care; See *Davie* v. *New Merton Mills Ltd.*,[2] at pp. 644-5.

The plaintiffs claim that they are entitled to arrest the "Permina 108" and "Permina Samudra XIV" under clause (b) of section 4(4) of the Act, as both these ships are owned by the defendants who are liable *in personam* on the plaintiffs' claim for non-payment of charter hire due in respect of their own ship, the "Ibnu". The plaintiffs maintain that the arrest of the two ships is well within the terms of section 4(4) and that the two motions to set aside the two writs should be dismissed.

The dispute in this case calls for the proper construction of section 4(4) of the High Court (Admiralty Jurisdiction) Act and in my opinion, if, on a careful analysis of the section, its meaning is clear and unambiguous, it is unnecessary to look elsewhere for any other authority to ascertain its true meaning. As suggested by counsel for the plaintiffs, the section can be broken up and applied to the facts of this case as follows: —

(1) *"In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 3 of this Act."*

The plaintiffs' claim fall within paragraph (h);

(2) *"being a claim arising in connection with a ship.'*

The plaintiffs' claims arise in connection with a ship, namely 'Ibnu'.

(3) *"where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship."*

The person who would be liable in the plaintiffs' action in personam for payment due under the charterparty is 'Pertamina', the defendants. When the cause of action arose, they were the charterers of 'Ibnu'.

(4) *"the Admiralty jurisdiction of the court may be invoked by an action in rem against —*

(a) *that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person."*

The plaintiffs cannot institute proceedings *in rem* against 'Ibnu' because at the time when the writs were issued, the 'Ibnu' was not owned by the defendants.

(5) "or (b) *any other ship which at the time when the action is brought, is beneficially owned as aforesaid."*

The plaintiffs are entitled to institute proceedings *in rem* against any other ship beneficially owned at the date of the issue of the writs by the person liable in personam, *i.e.* Pertamina the defendants. As the 'Permina 108' and

'Permina Samudra XIV' were at the date of the issue of the writs beneficially owned by the defendants they were liable to arrest by the plaintiffs.

In my judgment it is abundantly clear that on the facts of this case the plaintiffs have a right to arrest the "Permina 108" and "Permina Samudra XIV" under clause (b) of section 4(4) of the Act. This construction of section 4(4) finds support in several reported decisions and also in the current practice of the Admiralty Division of the High Court of Justice in England. But I must first deal with the *obiter dicta* of Lord Diplock in "The Eschersheim" case on which the defendants rely.

In my opinion the relevant parts of the speech of Lord Diplock in *The Eschersheim* are inapplicable to the facts of this case.

First of all, Lord Diplock's reference to the Scottish law (section 47(1) of the 1956 Act) is incomplete as he has failed to note or has disregarded the provisions of clause (b) of section 47(1) which empowers a plaintiff to proceed *in rem* against a ship of which "all the shares . . . are owned by the defender against whom that conclusion is directed". Under this provision, to satisfy a claim for payments due under a charterparty a claimant can arrest any ship in the ownership of the charterer. Lord Diplock appears to have based his opinion "that to be liable to arrest a ship must not only be the property of the defendant to the action but must also be identifiable as the ship in connection with which the claim made in the action arose (or a sister ship of that ship)" on paragraph (1) of Article 3 of the International Convention Relating to the Arrest of Seagoing Ships to which he referred to construe section 3(4) of Administration of Justice Act, 1956. It seems to me that Lord Diplock has failed to note the opening words of paragraph (1) of Article 3, to wit, "subject to the provisions of paragraph 4 of this Article". And paragraph (4) which deals with demise charters and empowers a claimant who has a claim relating to the ship under demise charter to arrest that ship or any other ship in the ownership of the charterer by demise closes with the following important words: —

"The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship."

The draftsman of The Administration of Justice Act, 1956 had to accommodate the effect of this provision and in my judgment he has clearly done so in section 3(4) of the 1956 Act. The result is that under clause (b) of section 3(4) of the 1956 Act, to satisfy a claim for payments due under a charterparty, a claimant can arrest not only any ship in the ownership of a charterer by demise but also in the case of a time charter any ship in the ownership of the charterer. The position is the same under section 4(4) of the High Court (Admiralty Jurisdiction) Act. The defendants therefore are liable to have their ships arrested for sums due under the "Ibnu" charterparty even though it was a time charter.

There is clear support for this view. In *Medway Drydock & Engineering Company Limited* v. *The "Andrea Ursula" (Owners),*[3] Brandon J. after setting out Article 3 of the "International Convention Relating to the Arrest of Seagoing Ships" stated, at page 148: —

"It is clear from the terms of article 3 of the convention that, in respect of claims (a) to (n) in article 1(1) for which a demise charterer is liable, the claimant is to be entitled to arrest either the ship to which the claim relates (that is to say, the demise chartered ship) or any other ship of which the demise charterer is the legal owner. *It is clear further that the same principle is to apply, mutatis mutandis, where a party other than the legal owner is liable on the claim, even though in a capacity different from that of demise charterer.*"

And later, at page 149: —

"... If section 3(4) is to give full effect to article 3 including in particular paragraph (4) of that article and the last three lines following it, the expression 'beneficially owned' must be given the second of the two meanings which I suggested earlier that it was capable of having, and not the first. *In other words, it must be given a meaning which includes not only a demise charterer, but also any other person with similar complete possession and control who may thereby become liable on a claim within paragraphs (d) to (r) of section 1(1) of the Act.*"

The emphasis is mine. There is further support in two other cases. The words "who would be liable on the claim in an action *in personam*" in section 3(4) of the 1956 Act were considered by Willmer J. in *The St. Elefterio Schwarz & Co. (Grain) Ltd.* v. *St. Elefterio, ex Arion (Owners).*[4] The learned judge said, at page 377: —

"In my judgment the purpose of the words ... 'the person who would be liable on the claim in an action in personam' is to identify the person or persons whose ship or ships may be arrested in relation to this new right (if I may so express it) of arresting a sister ship. The words used, it will be observed, are 'the person who would be liable', and not 'the person who is liable', and it seems to me, bearing in mind the purpose of the Act, that the natural construction of those quite simple words is, 'the person who would be liable on the assumption that the action succeeds'."

And Hewson J. expressed the same view in *Smith's Dock Co., Ltd.* v. *Owners of the M.V. St. Merriel,*[5] and made the matter even clearer, at page 544: —

"It seems to me that the purpose of section 3(4) of the Administration of Justice Act, 1956, is, amongst other things, to identify the person or persons whose ships may be arrested, and that such identification is a question of fact."

I would add that the identification of the person whose ship may be arrested is a question of fact to be decided on the particular circumstances of the case and that the "sister" ship which may be arrested need not be the sister of the ship to which the claim relates. In other words, it is not a requirement of the Act that the ship to be arrested under clause (b) should be in the same ownership as the ship to which the claim relates.

Finally, the Practice Direction issued by the Admiralty Registrar of the High Court of Justice in England clearly states that in order to proceed *in rem* against a "sister" ship, all that is necessary is to "show that its owners at the time when the action is brought were the charterers of the ship in respect of which the claim arises at the time when the cause of action arose." See [1965] 3 All E.R. 586.

In my opinion the relevant parts of the speech of Lord Diplock in *The Eschersheim,* on which the defendants rely, are of no assistance to the defendants. In my judgment, the defendants' construction of section 4(4) of the High Court (Admiralty Jurisdiction) Act is erroneous and therefore their first ground for setting aside the writs fails.

I now come to the defendants' second ground which has been referred to by both counsel as "the Banco point". The defendants submit that on the authority of the decision of the Court of Appeal in *Monte Ulia (Owners)* v. *Banco and Others (Owners) The Banco*,[6] the plaintiffs cannot arrest both "Permina 108" and "Permina Samudra XIV" and that they can arrest only one ship in the ownership of the defendants. They rely on the following passage in the judgment of Lord Denning, at page 153: —

"... Shortly after the statute was passed, Willmer J. in *The St. Elefterio* [1957] P. 179, 185, said that the purpose of the Act is to confer 'the right to arrest either the ship in respect of which the cause of action is alleged to have arisen or any other ship in the same ownership.' That is clearly right. There is no doubt about it.

I would add that the word 'ship' in the phrase 'any other ship' means 'ship' and not 'ships.' Although the Interpretation Act 1889, says that words in the singular include the plural, that does not apply when the contrary intention appears. The contrary intention does appear here. The jurisdiction may be invoked against either the offending ship or any other ship in the same ownership, but not more than one...."

The plaintiffs do not in this court seek to challenge the correctness of the decision in *the Banco* case but they seek to distinguish the present cases. They submit that *the Banco* decided that where there is a claim based on a single cause of action, the jurisdiction *in rem* cannot be invoked by a single writ addressed to and served upon more than one vessel. The plaintiffs contend that the court is here dealing with quite a different matter because: —

(1) Two separate writs have been issued in two distinct actions.

(2) Each writ names only one ship.

(3) In each action the writ has been served upon only one ship, the ship named in the action and only that ship has been arrested.

(4) Although there are similarities in the claims made respectively in each action, because they arise out of breaches of the same charterparty, each action is founded upon distinct causes of action as can be seen from the statements of claims.

Counsel for the plaintiffs submitted further that where a contract provides for payment of a sum of money at different times by instalments, a fresh cause of action arises each time there is a failure to pay upon the due date and he cited a number of authorities in support of this submission. Counsel went on to submit that when the writs were issued, there were seven instalments due under the "Ibnu" charter and the plaintiffs could have therefore issued seven writs *in rem* against seven ships in the ownership of the defendants.

I am unable to accept this submission. It is true that in a contract providing for the payment of a sum of money by instalments, a fresh cause of action arises each time there is a failure to pay upon the due date. It is equally true that in such a contract when a number of instalments are due, they merge and become a single debt. If there are seven instalments due, one does not issue seven writs to recover the seven instalments. That is never done for the simple reason that the total sum due constitutes a debt recoverable by a single writ. In my judgment the plaintiffs have only one maritime claim in respect of all sums due under the "Ibnu" charterparty. In fact the claim endorsed on both writs is one and the same maritime claim, "non payment of the charter hire due under the Charterparty dated the 1st day of September 1970 in respect of the vessel "Ibnu"." And in the affidavits leading to the arrest of the "Permina 108" and "Permina Samudra XIV", the same maritime claim is relied upon, that "there is due and owing from the defendants to the plaintiffs the sum of U.S.$7,230,711.48 by way of unpaid charter hire in respect of the said vessel "Ibnu"." The factual evidence clearly does not support the submission of the plaintiffs that they have more than one maritime claim within the meaning of section 4(4) of the High Court (Admiralty Jurisdiction) Act. In my judgment the plaintiffs have only one maritime claim in respect of the non-payment of the charter hire due under the "Ibnu" charterparty and they are not entitled to proceed *in rem* against two ships for the same maritime claim. The plaintiffs having first arrested the "Permina 108", the subsequent arrest of the "Permina Samudra XIV" must be set aside and the ship be released. In the result the Motion in Admiralty in Rem No. 277 of 1976 is dismissed and the Motion in Admiralty in Rem No. 279 of 1976 is allowed with an order in terms of prayer 3 thereof.

Order accordingly.

Solicitors: *Rodyk & Davidson; Selvadurai & Emmanuel.*

THE "PERMINA SAMUDRA XIV"; MARTROPICO COMPANIA NAVIERA S.A. v. OWNERS OF "PERMINA SAMUDRA XIV"

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) November 26, 1976]

[Singapore — Civil Appeal No. 30 of 1976]

Shipping — Claim in respect of unpaid charterparty in respect of ship — Warrant of arrest issued and executed in respect of ship belonging to defendants — Whether warrant of arrest can be executed against second ship belonging to defendants — Charterparty payments payable at different times by instalments — Two writs taken out each naming only one ship — High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 4(4).

In this case the appellants had a claim for the sum of US$7,230,711.48 by way of unpaid charterparty in respect of the *"Ibnu"* against the respondents. On July 24, 1976 a warrant of arrest was issued and executed against the *"Permina 108"*, a vessel owned by the respondents and the ship was detained. On the same day the appellants also obtained a warrant of arrest against another ship, the *"Permina Samudra XIV"* owned by the respondents. The respondents applied to the High Court to set aside the writ *in rem* and warrant of arrest against the *"Permina Samudra XIV"*. Before the conclusion of the hearing of the motion, the appellants filed their statements of claim, one in respect of the *"Permina 108"* for instalments amounting to US$3,418,521.41 and one in respect of the *"Permina Samudra XIV"* for instalments amounting to US$3,812,190.07. Choor Singh J. allowed the motion (*ante* p. 43). The learned judge held that the appellants having brought proceedings *in rem* against the respondents' ship *"Permina 108"* which they were entitled to do, cannot subsequently invoke by an action *in rem* the admiralty jurisdiction of the High Court against other ships of the respondents in respect of the same maritime claim. He found that there was one maritime claim in this case even though the charterparty provided for the payment of the